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*Unto the right Honourable, the Lords of
Council and Session, The humble P E-
TITION of Alexander Mylne
of Carriden*

sheweth,

THat where in the Competition of the Creditors of *Nicolson*, your Petitioner having repeated my Inhibition against several of *Sir William* his Creditors, whose Debts were contracted posterior to my said Diligence, on report of the Lord *Merfingtown* Ordinary, your Lordships fand that I not having legally adjudged the Estate of *Cockburnspeth* within year and day of the first effectual Adjudger, I cannot by vertue of my Inhibition draw any Share of the Proportion that the posterior Creditors got of the Price, in regard that the Creditors whose grounds of Debt are contracted before the Inhibition, doth much more than exhaust the price of the Lands: Whereas it is humbly represented, that it is a Principle in our Law, and was never controverted, but that all Rights acquired from Debtors to any part of their Estate, or Bonds granted by them, whereby their Estate is carryed away by Appryfings or Adjudications, are reduceable at the instance of a Creditor who hath legalie inhibit the Debitor before the granting of these Rights or Bonds, whereupon Appryfing or Adjudication did follow, and the Creditors Bonds whereupon their Adjudications followed being granted by *Sir William Nicolson* the common Debitor, posterior to the using of my Inhibition, are reducable *ex capite inhibitionis*: This the Creditors do not controvert, if it were in a subject, which they had only Right to, but they alledge that the Lands of *Cockburnspeth*, which is the subject contraverted, being affected with Adjudications legally led at the instance of *Sir William Nicolson*s Creditors for Debts prior to my Inhibition, which would exhaust the whole Subject, and although I should strict them out of the Field, yet your Petitioner not being within Year and Day of the first effectual Adjudger; My Adjudication not being legally led, I cannot cut of their Rights, I having no benefit thereby, but only the other Adjudgers whose Debts were prior to my Inhibition: To which it is answered. 1. That *its jus tertii* to them what Benefit I make by reducing of their Rights which cannot defend against my Inhibition being legally execute against the common Debitor before the contracting of their Debts, so that your Lordships cannot refuse to reduce their Rights upon my Inhibition. 2. If their Rights were once taken out of Field the prior Creditors could pretend to have no Interest in the Lands, in swa far as they were affected or burdened with the posterior Creditors their Adjudications, because they were taken off by my proper Diligence, the Benefit

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fit of which cannot Accresce to them, but only can be usefull and profitable to me who have used the Diligence to no other Person especially seing they cannot pretend a Prejudice by it, they being excluded by other Creditors whose Interest I reduce by my own Diligence. 3. By the Act of Parliament 1681. *Anent the Seal and Roup of Debtors Lands*, the Debtors Estate is appointed to be exposed to Sale, and in case that a Buyer be not found, every Adjudger or Appryser gets his Proportion of the Lands conform to his preference and Sums by which the Rights are restricted to these Shares they got of the Debtors Lands, and they can pretend to have no Interest in the Shares adjudged to pertain to others: Now suppose the Estate of *Cockburnspeth* had been so divided, because there could not be a Buyer, there is not the least question but your Petitioner would have reduced the Right of these persons Shares whose Debts were contracted posterior to my Inhibition, and would have carried their Shares to my self, neither could the Prior Creditors pretend any interest or Right to these Creditors Shares, whose Rights I reduced, because they were excluded from them by their Rights, and I had Right to them by vertue of my special Diligence, and the Price coming in place of the Lands, I must be preferred to the samen, in that same manner and way as I would have been preferred to their Share of the Lands: And seing this is of great import to your Petitioner, and that this point is new, and was never determined by your Lordships, and is of general concern, and the first time that ever your Lordships refused to reduce Bonds or Rights granted by Debtors after they were legallie inhibit.

May it therefore please your Lordships, to re consider your former Interloquitor, and rectifie the samen, and prefer your Petitioner, or otherwise to grant me a hearing in your Lordships own Presence thereon, and determine the samen. According to Justice, and your Lordships Answer.